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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,163	11/13/2003	Frederick Wilkins	10168-707919	8219
37462 7590 09/09/2008 LOWRIE, LANDO & ANASTASI, LLP ONE MAIN STREET, SUITE 1100 CAMBRIDGE, MA 02142				
EXAMINER				
PHASGE, ARUN S				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
09/09/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@ll-a.com
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Office Action Summary

Application No.

10/712,163

Applicant(s)

WILKINS ET AL.

Examiner

Arun S. Phasge

Art Unit

1795

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-21, 25-38, 41-45, 48, 50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) 37, 38, 41-45, 48 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-21, 25-36, 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 15-21, 33-36 and 52 are rejoined with the elected claims. Claims 37-38, 41-45, 48 and 50 stand as being non-elected, in particular for the means plus function which would be different from the structure recited in the elected claim or the method claims having the claimed function.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 15-21, 25-36 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gadini in view of Gaysowski of record for reasons of record.

The newly rejoined claims are rejected for the same reasons as used to reject the prior elected claims, because the claims recite the positively charged flow regulator or valve positioned downstream of the concentrating compartment.

Response to Arguments

Applicant's arguments filed 5/27/08 have been fully considered but they are not persuasive.

Applicants argue against the combination by stating that the Gaysowski patent does not apply a positive charge to a valve but instead teaches energizing the solenoid of a valve. The fact that Gaysowski uses the application of the charge to a portion of the valve would read upon the structure recited within the apparatus claims.

Applicants further argue that the function of the structure recited in the claims is different than the function of the structure of the prior art, i.e., that the application of the current generates hydrogen ions in a fluid. A claim drawn to apparatus must distinguish in terms of structure." *Ex parte Forsyth et al.*, 151 U.S.P.Q. 55.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the disclosure of the Gadini patent with the teachings of Gaysowski, because the Gaysowski patent teaches the use of the positively charged valve to allow the controlled removal of water from an electrochemical device.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is (571) 272-1345. The examiner can normally be reached on **MONDAY-THURSDAY, 7:30-6:00.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arun S. Phasge/
Primary Examiner, Art Unit 1795

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